IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06/03/2004

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.R. SINGHARAVELU

CMA. No. 1280 of 1996

Branch Manager,
Oriental Insurance Company Ltd.,
Madurai. .. Appellant/2nd Opposite Party.

-Vs-

1. S. Kadarshaw Rowther,
2. K. Jaithulah Beevi,
3. K. Assanathu. ..Applicants.
4. R. Kamalanathan
..1st Opposite Party

.. Respondents.

Appeal is against order dated 5-7-96, passed in W.C.No. 172 of 1993
on the file of Commissioner for Workmen's Compensation, Madurai (Before the Deputy Commissioner of Labour, Madurai).

!Mr. R. Sivakumar:- For appellant.

^Mr. K. Mahendran:- For Respondents 1 to 3.

Mr. G. Thilagavathi:- For 4th Respondent.

:JUDGEMENT
(Jugement of Court was made by P. SATHASIVAM, J.,)

Aggrieved by the order of Deputy Commissioner of Labour, Madurai dated 5-7-96, made in W.C.No.172 of 93, Oriental Insurance Company Limited, Madurai has filed the above appeal under Section 3 0 of the Workmen's Compensation Act.

2. In respect of death of one Sikkandar on 18-11-1991 , in the course of his employment, his parents and sister preferred the claim petition (W.C.No.172/93) before the Deputy Commissioner for Rs.2 lakhs. Before the said authority, two witnesses were examined as P.Ws.1 and 2 and 14 documents marked as Exs. P1 to P-14. On the side of the owner of the vehicle, the owner of the vehicle and his driver Kaliappan alias Thiagarajan were examined as R.Ws.1 and 2 respectively, besides marking 3 documents as Exs. R-1 to R-3. The Insurance Company has examined their Assistant Manager as their witness. The Deputy Commissioner, at the first instance i.e., on 5-9-94 passed an order directing the owner of the vehicle-employer to pay compensation of Rs.83,192/in favour of the applicants. But subsequently, on a petition filed by the owner, the Deputy Commissioner re-heard the matter, and passed the present order dated 5-7-96, which is under challenge, directing the second opposite party/Oriental Insurance Company to pay the said amount of Rs.83,192/-. Questioning the same, the Insurance Company has filed the present appeal.

3. Heard learned counsel for the appellant as well as respondents.

4. With regard to the earlier order dated 5-9-94, no dispute was raised or argument advanced on the quantum of compensation of Rs.83,192/-, determined by the deputy Commissioner. The only point for consideration in this appeal is, whether the appellantInsurance company is liable to pay the compensation, as ordered by the Deputy Commissioner.

5. Learned counsel for the appellant-Insurance Company would contend that the Deputy Commissioner failed to note that inasmuch as the owner of the vehicle has allowed the deceased Sikkandar to drive the car without a valid driving licence and the deceased was murdered while driving the said car, he violated the terms and conditions of the policy. It is seen that consequent to the order passed on 5-9-94 directing the owner-employer to pay the compensation, on the application made by him, the matter was re-heard and he was permitted to file counter statement highlighting his stand. In the counter statement, the first opposite party has admitted that he is the owner of the vehicle T.C.L. 7073. It is also his case that on 18-11-91, he

entrusted the said car to his driver Kaliappan alias Thiagarajan. It is also his case that while he was on duty, he permitted the deceased Sikkandar, who was only a cleaner, without specific permission or authorisation from him. In other words, according to him, the deceased was not an employee and authorised to drive the car T.C.L. 7073. In his evidence as R.W.1, he has stated before the Deputy Commissioner that on the date of the accident i.e., on 18-11-91, the deceased Sikkandar was his cleaner and he made a complaint to the police regarding the theft of his vehicle. Subsequently, he came to know that the vehicle was stolen by some miscreants and they murdered the driver namely Sikkandar, who was driving the vehicle at the relevant time. He also contended that his driver was only Kaliappan alias Thiagarajan and he was having a valid licence. He further deposed that he did not authorise the deceased to drive his vehicle. Kaliappan alias Thiagarajan was examined as R.W.2. According to him, on 18-11-91, he parked the car T.C.L. 7073 at the Palani bus-stand, handed over its key to the deceased Sikkandar and left the place. On verification, he came to know that the vehicle was stolen and immediately he made a complaint to his employer-R.W.1.

6. The Assistant Manager of the Regional Office of the Insurance Company was also examined on the side of the insurance Company. He admitted that the vehicle T.C.L. 7073 was insured with them and they came to know that one Kaliappan alias Thiagarajan is the regular driver of the said vehicle. The deceased was not having a valid driving licence and the enquiry at the office of the Regional Transport Officer revealed that the deceased was having L.L.R. licence. Since the deceased was not the authorised driver and the owner has violated the policy condition, they are not liable to pay any amount.

7. It is clear from the materials placed that the first opposite party is the owner of the car TCL 7073. Even according to him, his regular driver was Kaliappan alias Thiagarajan, who was having a valid driving licence to drive the car, and the deceased Sikkandar was his cleaner. Though he was not having a valid driving licence, admittedly, at the time of the accident, he was having L.L.R. As rightly observed by the Deputy Commissioner, though R.W.1 says that the deceased was not authorised or permitted to drive the car, there is no acceptable evidence to show that he was prevented by the employer. As a matter of fact, it is seen from the evidence of the regular driver-R.W.2 that he handed over the key to the deceased Sikkandar and while the latter was driving the car, he was murdered by some miscreants and died. Though the deceased was murdered by the miscreants, since the death occurred in the course of his employment, by use of motor vehicle, there is no dispute that the applicants being parents and sister, are entitled to approach the Tribunal under the Motor Vehicles Act or to the Deputy Commissioner under the Workmen's Compensation Act. They rightly elected the Deputy Commissioner under the Workmen's Compensation Act and prayed for compensation. There is no serious dispute that the murder of the deceased Sikkandar was due to an accident arising out of the use of motor vehicle and in the course of his employment.

8. It is the claim of the appellant-Insurance Company that the owner of the car has violated the terms and conditions of the policy in allowing the deceased Sikkandar, who was not having a valid driving licence, to drive the car; hence they are not liable to pay compensation as ordered by the Deputy Commissioner. We have already referred to the evidence of R.W.1, owner of the vehicle; R.W.2, regular driver Kaliappan alias Thiagarajan. It is not disputed that the vehicle was covered by a valid policy at the time of the incident. R.W.1 has admitted that the deceased was his employee, namely, cleaner. The only objection is that neither he possessed with a valid driving licence nor authorised to drive the car. However, R.W.2 has categorically admitted that after parking the car at the Palani busstand, he handed over the key to the deceased. Even according to the officer of the Insurance Company, the deceased was having a Learner's Licence (L.L.R) at the time of the accident. Though it is stated that the deceased had not been permitted by R.W.1 to drive the car, in the absence of specific evidence or proof and in view of the admission of R.W.2 that he himself handed over the key to the deceased, both the owner and the Insurance Company cannot escape from their liability. We have already referred to the admitted fact of the Insurance Company that at the relevant time, the deceased was having a Learner's Licence (L.L.R). It is relevant to refer a decision of the Apex Court in National Insurance Co., Ltd., v. Swaran Singh [2004 ACJ (Volume I) page 1] wherein Their Lordships have held that "a person holding Learner's Licence would also come within the purview of "duly licensed" as such, a licence is also granted in terms of the provisions of the Motor Vehicles Act and the Rules framed thereunder". They further held that even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149 (2) of the Motor Vehicles Act. In the light of the above dictum and in view of the admitted factual position in this case that the deceased was having a learner's licence at the time of the incident, we hold that the appellant/Insurance Company cannot escape from its liability. We have already held that there is no evidence to show that the owner has violated the terms of the policy. As stated earlier, there is no dispute regarding the quantum of compensation arrived at by the Deputy Commissioner.

9. In the light of what is stated above, we do not find any ground for interference; accordingly the appeal fails and the same is dismissed. No costs. (P.S.J.,) (S.R.S.J.,) 06-03-2004 R.B.

Index:- Yes
Internet:- Yes
To:
1. The Deputy Commissioner of Labour, Madurai (Commissioner for Workmen's Compensation), Madurai with records.

2. The Record Keeper, V.R Section, High Court, Madras